IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRY SUTTON, d/b/a CINKAJ BROGUE LIMITED PARTNERSHIP, BRENDA L. SUTTON, d/b/a CINKAJ BROGUE LIMITED PARTNERSHIP, and CHRIS CINKAJ, d/b/a CINKAJ BROGUE LIMITED PARTNERSHIP,	:	No. 1:14-cv-1584
Plaintiffs,	:	(JUDGE YVETTE KANE)
	:	FILED ELECTRONICALLY
v.	:	AMENDED COMPLAINT FOR DECLARATORY RELIEF AND MONETARY DAMAGES
	:	JURY TRIAL DEMANDED
CHANCEFORD TOWNSHIP, and TIMOTHY J. BUPP, SOLICTITOR, CHANCEFORD TOWNSHIP, in his official capacity, JOHN SHANBARGER JR., CHAIR, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in his official capacity, BRUCE MILLER, VICE CHAIR, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in his official capacity, MARK A. BUPP, VICE CHAIR, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in his official capacity, RALPH DAUGHERTY, MEMBER, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in his official capacity, THOMAS GIZZI SR., MEMBER, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in his official capacity, ROBERT LYTER, MEMBER, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in his official capacity,	:	

BRENDA GOHN, SECRETARY, CHANCEFORD TOWNSHIP PLANNING COMMISSION, in her official capacity, BRADLEY K. SMITH CHAIR, CHANCEFORD TOWNSHIP BOARD OF SUPERVISORS, in his official capacity, KENT E. HEFFNER, VICE CHAIR, CHANCEFORD TOWNSHIP BOARD OF SUPERVISORS, in his official capacity, CLIFTON M. BALDWIN, MEMBER, CHANCEFORD TOWNSHIP BOARD OF SUPERVISORS, in his official capacity, DAVID HOPKINS, CHAIR, CHANCEFORD TOWNSHIP ZONING HEARING BOARD, in his official capacity, MARK FREY, MEMBER, CHANCEFORD TOWNSHIP ZONING HEARING BOARD, in his official capacity, DAVID J. HIVELY, MEMBER, CHANCEFORD TOWNSHIP ZONING HEARING BOARD, in his official capacity, JEFFREY L. KOONS, CHANCEFORD TOWNSHIP ZONING OFFICER, in his official capacity, GRANT A. ANDERSON, CHANCEFORD TOWNSHIP ENGINEER, in his official capacity,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY RELIEF AND MONETARY DAMAGES

I. INTRODUCTION

1. This is an action for damages brought by co-owners of a business known as Cinkaj Brogue Limited Partnership against Chanceford Township government and various township officials alleging that the Township's limitations on the use of their property, a

shopping center development in Chanceford Township, York County, Pennsylvania, violates their rights under the United States and Pennsylvania Constitutions.

II. JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331.

3. This action arises under the Constitution of the United States, specifically the First and Fourteenth Amendments, as hereinafter more fully appear.

4. Jurisdiction is also based on the Civil Rights Act of 1871, as amended, 42 U.S.C. §1983, wherein Plaintiffs have been denied certain Constitutional rights under the First Amendment by local officials acting under color of state law.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) since Plaintiffs and Defendants exist, reside, and/or are employed in this district and the events which gave rise to the claims asserted in this Complaint occurred in this district.

III. SUPPLEMENTAL JURISDICTION

6. The Court has original jurisdiction over the Plaintiffs' "First Claim," as alleged in paragraphs 1-5, above.

7. Plaintiffs' action also arises under Article 1 §7 to the Pennsylvania Constitution.

8. Plaintiffs' "Fourth Claim" is so related to the Plaintiffs' "First Claim" that both claims form part of the same case or controversy under Article III to the U.S. Constitution as hereinafter more fully appear.

9. The jurisdiction of this Court is based on 28 U.S.C. §1367(a).

IV. PARTIES

10. Plaintiff Terry L. Sutton ("Sutton") is a natural person who does business under the trade name "Cinkaj Brogue Limited Partnership" and whose business address is 232 S. George Street, York, PA 17403.

11. Plaintiff Brenda L. Sutton ("Brenda Sutton") is a natural person who does business under the trade name "Cinkaj Brogue Limited Partnership" and whose business address is 232 S. George Street, York, PA 17403.

12. Plaintiff Chris Cinkaj ("Cinkaj") is a natural person who does business under the trade name "Cinkaj Brogue Limited Partnership" and whose business address is 232 S. George Street, York, PA 17403.

13. Plaintiffs, Terry L. Sutton and Brenda L. Sutton are adult married individuals who reside at 302 Forest Hills Road, Red Lion, PA 17356.

14. Plaintiff Chris Cinkaj is an adult individual who resides at 827 Hulmesville Road, Langhorne, PA 19047.

15. Plaintiffs are part owners of the property identified as 2514 Delta Road, Chanceford Township, York County, Brogue, PA (Parcel No. 21000FM0080B000000 and 21000FM0080B0T0001) (hereafter the "Property"), and recorded in the Office of the Recorder of Deeds in and for York County on March 8, 2006 at Book 1795, Page 5095.

16. All Plaintiffs may be referred to collectively as ("Plaintiffs").

17. Defendant Timothy J. Bupp ("Bupp") is a natural person residing at 34 Bupp Lane, Brogue, PA 17309, who at all times relevant to this Complaint was Solicitor for the Township of Chanceford, Pennsylvania. He is being sued in his official capacity only.

18. Defendant Bradley R. Smith ("Smith") is a natural person residing at 12778 Stamper Rd., Brogue, PA 17309, who at all times relevant to this Complaint was Chair of the Board of Supervisors for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

19. Defendant Kent E. Heffner ("Heffner") is a natural person residing at 3835 Markle Rd., Brogue, PA 17309, who at all times relevant to this Complaint was Vice Chair of the Board of Supervisors for the Township of Chanceford, Pennsylvania.

20. Defendant Clifton M. Baldwin ("Baldwin") is a natural person residing at 2669 Old Forge Rd., Brogue, PA 17309, who at all times relevant to this Complaint was a member of the Board of Supervisors for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

21. Defendants Smith, Heffner and Baldwin may be referred to collectively as the "Supervisors."

22. Chanceford Zoning Ordinance § 517 Specifies that collectively and individually, as members of the Board of Supervisors for the Township of Chanceford, Pennsylvania, the Supervisors are charged with exercising appellate jurisdiction in administrative review where it is alleged that there is error in any order or refusal made by a zoning official. (Exhibit "H").

23. Defendant Jeffrey L. Koons ("Koons") is a natural person residing at 15684 Laurel Rd., Felton, PA 17322, who at all times relevant to this Complaint was Zoning Officer for Chanceford Township, York County, Pennsylvania. He is sued in his official capacity only.

24. As Zoning Officer, Koons is charged with "enforcement of the Ordinance." (Exhibit "I").

25. Defendant Grant A. Anderson ("Anderson") is a natural person residing at 1157 New Bridgeville Rd., Red Lion, PA 17356, who at all times relevant to this Complaint was Township Engineer for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

26. As Township Engineer, Anderson is charged with "making recommendations to the Zoning Hearing Board when involving a zoning application." Chanceford Township Zoning Ordinance §515. B. (Exhibit "J").

27. Defendant David Hopkins ("Hopkins") is a natural person residing at 10060 Fenmore Rd., Felton PA 17322, who at all times relevant to this Complaint was Chair of the Zoning Hearing Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

28. Defendant Mark Frey ("Frey") is a natural person residing at 1500 Frey Rd., Felton, PA 17322, who at all times relevant to this Complaint was a member of the Zoning Hearing Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

29. Defendant David J. Hively ("Hively") is a natural person residing at 11600 Hively Rd., Brogue, PA 17309, who at all times relevant to this Complaint was Chair of the Zoning Hearing Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

30. Defendants Hopkins, Frey and Hively may be referred to collectively as the "Members."

31. Defendant John Shanbarger Jr. ("Shanbarger") is a natural person residing at 14200 Laurel Rd., Felton, PA 17322, who at all times relevant to this Complaint was Chair of the Planning Commission Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

32. Defendant Bruce Miller ("Miller") is a natural person residing at 1125 New Bridgeville Rd., Red Lion, PA 17356, who at all times relevant to this Complaint was Vice Chair of the Planning Commission Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

33. Defendant Mark A. Bupp ("Mark Bupp") is a natural person residing at 10660 Gum Tree Rd., Brogue, PA 17309, who at all times relevant to this Complaint was a Member of the Planning Commission Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

34. Defendant Ralph Daugherty ("Daugherty") is a natural person residing at 12480 Game Club Rd., Brogue, PA 17309, who at all times relevant to this Complaint was a Member of

the Planning Commission Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

35. Defendant Thomas Gizzi Sr. ("Gizzi") is a natural person residing at 943 Trinity Rd., Felton, PA 17322, who at all times relevant to this Complaint was a Member of the Planning Commission Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

36. Defendant Robert W. Lyter ("Lyter") is a natural person residing at 69 Cedar Ridge Ave., Felton, PA 17322, who at all times relevant to this Complaint was a Member of the Planning Commission Board for the Township of Chanceford, Pennsylvania. He is sued in his official capacity only.

37. Defendant Brenda C. Gohn ("Gohn") is a natural person residing at 12149 Gum Tree Rd., Brogue, PA 17309, who at all times relevant to this Complaint was Secretary of the Planning Commission Board for the Township of Chanceford, Pennsylvania. She is sued in her official capacity only.

38. Defendants Hively, Shanbarger, Miller, Bupp, Daugherty, Gizzi, Lyter, and Gohn may be referred to collectively as the "Commissioners Defendants."

39. All Defendants may be referred to collectively as ("Defendants").

40. Defendant, Chanceford Township, Brogue, Pennsylvania ("Township") is a township, organized and existing under the laws of the Commonwealth of Pennsylvania,

possessing legal personhood within the meaning of 42 U.S.C. § 1983, and located in the Commonwealth of Pennsylvania.

41. "Zoning Board" are agents of Chanceford Township and all are operating under color of state law.

42. "Supervisors" are agents of Chanceford Township and all are operating under color of state law.

43. Chanceford Zoning Ordinance §516.A. specifies that collectively and individually, as members of the Planning Commission for the Township of Chanceford, Pennsylvania, the Commissioners are charged with exercising appellate jurisdiction in administrative review where it is alleged that there is error in any order or refusal made by a zoning official. (Exhibit "K").

44. Chanceford Zoning Ordinance §513.C. specifies the powers of the Members individually and of the Zoning Board as whole are limited to "interpret any provision of ordinance including zone boundaries; to hear and decide special exceptions upon which the Board is required to pass under this Ordinance; and to hear and decide where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Officer in the enforcement or interpretation of this Ordinance." (Exhibit "L")

45. Chanceford Zoning Ordinance §516.A. specifies the powers of the Commissioners and of the Planning Commission as a whole are limited to "giving a written

report to the Zoning Hearing Board within thirty (30) days of receiving an application for a special permit or variance." (Exhibit "K").

46. Chanceford Zoning Ordinance §516.A. specifies that

Collectively and individually, as Commissioners of the Planning Commission, the Commissioners have authority to exercise appellate jurisdiction in administrative review where it is alleged that there is error in any order or refusal made by a zoning official. (Exhibit "K").

47. Chanceford Zoning Ordinance §516.A. specifies that collectively and individually, as members of the Planning Commission for the Township of Chanceford, Pennsylvania, the Members are charged with exercising appellate jurisdiction in administrative review of applications for special permits before they are heard before the Zoning Hearing Board. (Exhibit "K").

IV. COLOR OF LAW

48. Plaintiffs are informed, believe, allege that, at all times relevant to this action, all Defendants acted in their official and governmental capacities and under of state and local law, and all of the acts alleged herein were done within the course and scope of their office, employment, and agency.

V. FACTS

49. Plaintiffs, d/b/a Cinkaj Brogue Limited Partnership, seek declaratory judgment and monetary damages against the Defendants on the grounds that the denial of a zoning permit, first by the recommendation to deny by the York County Planning Commission and then by the

final recommendation to deny by the Chanceford Township Zoning Hearing Board for the use of property as a private club, assembly hall, entertainment facility, night club, theater or other permitted use violated the United States Constitution. In addition, Plaintiffs challenge the agreement by Defendants to allow a church to lease space in the same mall as the proposed Cinkaj Brogue Limited Partnership facility was made after the zoning application by Brogue was received and before a hearing was commenced by the Chanceford Township Zoning Hearing Board.

50. Defendants are acting under color of state law, namely, the Pennsylvania Municipalities Planning Code, 53 P.S. §10101, et. seq. and specifically §10603 governing the implementation of provisions for conditional uses to be allowed or denied by the governing body.

51. Chanceford Township ("Township") adopted the ordinance known as the Chanceford Township Zoning Ordinance ("Ordinance") on April 10, 2006.

52. Chanceford Zoning Ordinance §513.C. gives the Chanceford Township Zoning Hearing Board ("Zoning Board") exclusive jurisdiction to rule on all zoning applications for uses pursuant to Chanceford Township Zoning Ordinance. (Exhibit "L").

53. Chanceford Zoning Ordinance §513.C.2. specifies that collectively and individually, as Members of the Hearing Zoning Board, Members have authority "to hear and decide special exceptions upon which the Board is required to pass under this Ordinance." (Exhibit "O").

54. Manner of operation of an Adult Oriented Facility is regulated under Chanceford Zoning Ordinance §407. (Exhibit "A").

55. The General Commercial Zone allows for the use of property for an "Adult Oriented Facility" under Special Exemption as shown in Table 203.1 and Article IV of the Chanceford Zoning Ordinance. (Exhibits "B" and "C").

56. Property is located in the General Commercial Zone in Chanceford Township, York County, Pennsylvania as set forth on the Chanceford Township portion of the Zoning Map. (Exhibit "D").

57. Chanceford Zoning Ordinance §407 sets forth the general and specific requirements, all of which must be met, in order for Members to approve a special exemption. (Exhibit "A").

58. Chanceford Zoning Ordinance §502.2 sets for the requirements for special exceptions and states, "For any use permitted by special exception, a special exception must be obtained from the Zoning Hearing Board." (Exhibit "P").

59. Chanceford Zoning Ordinance §502.2 states: "All applicants for a special exception shall be referred to the Planning Commission for a report. The Chairman of the Planning Commission shall insure that a copy of its report is delivered to the Township Secretary for inclusion in the permanent record of the application, to the Zoning Officer and to the Zoning Hearing Board." (Exhibit "P").

60. Chanceford Zoning Ordinance §514.a.3 sets forth the requirement for hearings for special exceptions conducted by the Chanceford Zoning Hearing Board, and its preamble states: "At public hearings, the applicant or appellant is entitled to the rights set forth herein and must conform to the procedures set forth herein." (Exhibit "O").

61. Chanceford Zoning Ordinance §514.3.i states:

"When the Board fails to render a decision within the period required by this subsection, or fails to hold the required hearings within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to be rendered in favor of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided the Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in subsection 'a' of this section." (Exhibit "R").

62. On May 23, 2013, The Chanceford Zoning Hearing Board held a meeting to review and discuss Plaintiff's Application for Special Exception. This meeting was held seventy-three (73) days from the March 12, 2013 date of Plaintiffs' Application request, thirteen days (13) over the 60-day requirement specified under Chanceford Zoning Ordinance §514.

63. Plaintiffs did not agree in writing to an extension of time as required under Chanceford Zoning Ordinance §Section 514. (Exhibit "S").

64. Defendants failed to comply with Chanceford Zoning Ordinance §514.3.i by not holding the hearing within sixty (60) days from the date of the Plaintiffs' request for special exemption and not obtaining an agreement in writing from Plaintiffs to an extension of time.

65. Defendants did not follow their own rules and procedures as specified in Chanceford Zoning Ordinance §514.3.i. Defendants failed to meet or render a decision within the

time specified and failed to give public notice of said decision within the ten (10) days they could have met to render a decision in the same manner as provided in Chanceford Zoning Ordinance §514.3.i.

66. Defendants did not conform to the procedures set forth in Chanceford Zoning Ordinance §514. By not following their own rules, Defendants denied Plaintiffs their procedural due process rights.

67. Chanceford Zoning Ordinance §516 sets forth the requirements by the Planning Commission and Zoning Hearing Board cases and states, "Within thirty (30) days of receiving an application for a special permit or variance from the Zoning Hearing Board, the Planning Commission must give a written report on it to the Board. The Commission is governed by the same standards as the Board in making its recommendations plus its special knowledge gathered from planning for the Township." (Exhibit "T").

68. On April 16, 2013, the Chanceford Township Planning Commission unanimously voted to not recommend approval of Plaintiffs' request for Special Exemption to the Zoning Hearing Board. This meeting was held forty-seven (47) days from the March 12, 2013 date of Plaintiffs' Application request, 17 days over the 30-day requirement as specified in Section 516 of the Zoning Ordinance. (Exhibit "T").

69. Defendants failed to comply with Section 516 of the Zoning Ordinance by not holding the hearing within sixty (30) days from the March 12, 2013 date of the Plaintiffs' request for special exemption.

70. By not complying with Section 516, Defendants denied Plaintiffs their procedural due process rights.

71. At all times relevant, the Property was located within the General Commercial Zoning District as the same is defined under Section 203 of the Zoning Ordinance which provides for zoning regulation in Chanceford Township, Pennsylvania. (Exhibit “B”).

72. Chanceford Zoning Ordinance § 210.1 states, the General Commercial Zone purpose is “to provide orderly development of those uses necessary to meet the community needs of Chanceford Township and the surrounding area for goods and services of a general commercial nature.” (Exhibit “E”).

73. Chanceford Zoning Ordinance § 210.1. states, The General Commercial Zone “is intended that the standards of this Zone will constitute a harmonious and appropriate development, contribute to the economic base of the Township, and otherwise carry out the purposes of the Zone.” (Exhibit “E”).

74. Chanceford Zoning Ordinance § 203 states, the General Commercial Zone allows for the use of property for retail, restaurant, entertainment and general business. (Exhibit “B”).

75. Chanceford Zoning Ordinance §210.1. specifies that the General Commercial Zone permits the orderly development of those uses necessary to meet the community needs for goods and services of a general commercial nature.” (Exhibit “E”).

76. The General Commercial Zone allows for the use of property for an "Adult Oriented Facility" under Special Exemption as shown in Table 203.1 and Article IV of the Chanceford Zoning Ordinance. (Exhibits "B" and "C").

77. On March 12, 2013, Plaintiffs submitted an Application for Special Exception in Section 203 of the Zoning Ordinance to the Defendant Chanceford Township Zoning Hearing Board seeking to make use of the then-vacant Property as an Adult Oriented Facility ("Application"). A true and correct copy of the Application is attached hereto as "Exhibit F" and is hereby incorporated by reference.

78. The Application disclosed Plaintiffs' reply to all requirements for request for special exception to operate as an Adult Oriented Facility as requested under Zoning Ordinance § 407.2.f. (Exhibits "F" and "A").

79. The Application disclosed the intention of Plaintiffs to use the Property for the purpose of an Adult Oriented Facility."

80. The Application disclosed the intention of Plaintiffs to use the Property to operate as an Adult Cabaret, as defined in the Ordinance, "featuring live nude dancers."

81. The Application disclosed the intention of Plaintiffs to "not offer materials, merchandise, film, or service for sale, rent, lease, loan or for view outside of a building or structure."

82. The Application disclosed the intention of Plaintiffs to "establish a membership requirement for entry into the facility and with ten (10) separate rooms for private entertainment."

83. The Application disclosed the intention of Plaintiffs to have "opaque coverings over all windows and doors" of any area of the Property "in which materials, merchandise, film, or offered items of service or entertainment are possibly visible from outside the structure."

84. The Application disclosed the intention of Plaintiffs to "not erect or install any sign upon the premises depicting or giving a visual representation of the type of materials, merchandise, film, service or entertainment offered therein."

85. The Application disclosed the intention of Plaintiffs to "post each and every entrance to the structure with a notice that the use in an Adult Facility that persons under the age of eighteen (18) are not permitted to enter; and warning all others that they may be offended upon entry."

86. At the time of submission, the Application disclosed that the Property was more than 1,000 feet from any public or parochial school or church specifically being "more than 1,000 feet from Clearview Elementary School located at 2650 Delta Road, Brogue, PA."

87. The Application disclosed that the Property "is improved with 169 parking spaces which have been constructed, sized and painted in conformity with the Ordinance."

88. The Application disclosed that the Property "has been satisfied per the approved land development plan describing the planting of tree or shrubs around the perimeter of the Facility" in conformity with the Ordinance.

89. The Application met all of the criteria of the Ordinance as set forth in order for Chanceford Township Zoning Hearing Board members to approve an Application for Special Exemption.

90. Chanceford Zoning Ordinance §203 specifies the definition of establishments, as set forth as "permitted" under the General Commercial Zone include retail, restaurant, entertainment and general business and similar enterprises. This is the only reference to "permitted" uses. Thus, if the use proposed by Plaintiffs is not permitted at the location of the Property, then the uses "permitted" is flatly prohibited in the Township of Chanceford. (Exhibit "B").

91. In a conversation on February 11, 2013, Plaintiff Sutton asked Timothy Bupp, Chanceford Township Solicitor, about having an adult entertainment facility in the Township. Plaintiff then disclosed his intention to offer adult entertainment at the Property, with live dance performances. Defendant Bupp told Plaintiff Sutton to "come to the meeting tonight [Chanceford Township Board of Supervisors February 11, 2013 Regular Meeting] and we can talk about it."

92. At the February 11, 2013 Chanceford Township Board of Supervisors meeting, Plaintiff Sutton stated that there was someone interested in subleasing space in the Property to

private groups with BYOB privileges and was informed by Defendant Bupp that per the Zoning Ordinance, Plaintiffs "would need to apply to the Zoning Hearing Board for special exception for any proposed restaurant or entertainment use at which time the board would determine the conditions of use."

93. At the February 19, 2013 Chanceford Township Planning Commissioners meeting, Defendant Timothy Bupp asked Plaintiff Sutton to come up and discuss the proposed Application. Plaintiff Sutton said, "I'm not sure I'm ready to discuss this."

94. In a conversation after the February 19, 2013 meeting, Defendant Timothy Bupp and Plaintiff Sutton had a conversation about the proposed adult facility. Defendant Bupp told Plaintiff Sutton, "If you can't get your use approved here in Chanceford Township you will never get it approved in York County."

95. At the April 16, 2013 Chanceford Township Planning Commission meeting, Plaintiff Sutton and Chris Vedder, attorney for Cinkaj Brogue Partnership, explained the specifics about the Application and exhibits relative to the Zoning Ordinance and answered questions raised by commissioners and the general public. (Exhibit "V").

96. During the public comment period at the April 16, 2013 Chanceford Township Planning Commission meeting, Defendant Shanbarger referred to Section 102 of the Zoning Ordinance that states that the purpose of the ordinance is the public welfare, safety, morals and general welfare and stated, "There is nothing stated tonight that you are meeting very many of these if any." (Exhibits "V" and "U").

97. On April 16, 2013, after hearing more than two hours of testimony and dissenting opinions from opponents of Plaintiffs' Application with morality-based arguments, Chanceford Township Planning Commissioners recommended that the Chanceford Township Zoning Hearing Board reject Plaintiffs' Application for an Adult Oriented Facility. (Exhibit "V").

98. At the conclusion of the April 16, 2013 Chanceford Township Planning Commission meeting, Defendant Miller, Vice Chair of the Planning Commission, made the motion to not recommend approval of Plaintiffs' request for Special Exemption to the Zoning Hearing Board. Defendant Daugherty seconded the motion and the motion carried unanimously. (Exhibit "V").

99. At the May 13, 2013 Chanceford Township Supervisors meeting, Defendant Smith made the motion to direct Defendant Bupp, to attend the May 23, 2013 Zoning Hearing Board meeting to oppose the approval of Plaintiffs' Application for Special Exception for a gentlemen's club. Seconded by Defendant Heffner, the motion carried unanimously. (Exhibit "W").

100. At the May 21, 2013 Chanceford Township Planning Commission meeting, Defendant Koons, Zoning Officer for Chanceford Township, requested the help of the Planning Commission to determine what sections of the Zoning Ordinance are relevant in proving noncompliance with Plaintiffs' Application with the Zoning Ordinance. (Exhibit "X").

101. Chanceford Zoning Ordinance § 407.g. states that an Adult Oriented Facility "must be located at least one thousand (1,000) feet from any church. . .In no case can the use be within five hundred (500) feet on any building used as a church. . ."

102. On May 1, 2013, York County Commissioners approved an agreement for SonLight Chapel, a non-denominational church, to lease a space in the Plaintiff's Property which was formally occupied by District Court 19-3-02. (Exhibit "Y").

103. On May 3, 2013, Defendant Bupp was quoted by reporter Lauren Boyer in the *York County Record* as stating, "Because the lease here [SonLight Chapel] is after the date of the application, I don't think it's going to be relevant." (Exhibit "M").

104. On May 3, 2013, Defendant Bupp was quoted by reporter Lauren Boyer in the *York County Record* as stating, "If the use [Adult oriented Facility] meets the requirement of the law, they [Chanceford Township Zoning Hearing Board] are required to uphold the law." (Exhibit "M").

105. On May 23, 2013 Plaintiff Sutton appeared before the Chanceford Township Zoning Hearing Board meeting.

106. During the course of the May 23, 2013 meeting, Member Defendants solicited the advice of legal counsel, and the same was provided by Defendant Bupp.

107. At the May 23, 2013 meeting, Defendant Bupp expressly advised Member Defendants that their consideration to grant of Special Exemption must be directed toward determining whether the proposed use of the Property was a permitted use under the Zoning

Ordinance, and whether the proposed use was of the same general character as other uses permitted in the applicable zone.

108. In public deliberations during the course of the May 23, 2013 hearing, Member Defendants heard requests to deny Plaintiffs' request for a Special Exemption since Plaintiff's proposed adult-oriented facility might be "immoral," "criminal," outside the "character and nature. . .in the neighborhood," or "not appropriate for the community," among other Constitutionally impermissible rationales.

109. On June 10, 2013, after being asked what was needed to put a referendum on the ballot that would prohibit an adult oriented facility from being located in Chanceford Township, Defendant Bupp, stated, "This use, regardless of how undesirable, is protected by the Constitution under free speech."

110. On June 17, 2013, Plaintiff Sutton appeared before the Chanceford Township Zoning Hearing Board meeting.

111. During the course of the June 17, 2013 Chanceford Township Zoning Hearing Board meeting, Plaintiffs, by and through counsel, argued that the denial of Plaintiffs' Application for Special Exemption would constitute regulation of the proposed use based on the content of expressive conduct or speech, and that the same is a right protected by the Constitution of the United States.

112. On July 22, 2013, Plaintiff Sutton appeared before the Chanceford Township Zoning Hearing Board meeting.

113. In public deliberations during the course of the July 22, 2013 meeting, Member Defendants disregarded Plaintiffs' request for protection of their Constitutional rights, and heard requests to deny the Application for Special Exemption in reliance on (among other things): the assertion of the Chanceford Township Zoning Hearing Board's right to regulate businesses that have a sexual orientation; the assertion of the Chanceford Township Zoning Hearing Board's right to consider the character of a neighborhood in granting a permit; and the assertion of the Chanceford Township Zoning Hearing Board's right to determine the effect of the proposed use upon health, safety, morals, and welfare of the community.

114. At the conclusion of the July 25, 2013 meeting, Chanceford Township Zoning Hearing Board Members voted on whether to approve Plaintiffs' Application for Special Exemption, and those Members voting unanimously rejected it.

115. On August 15, 2013, Chanceford Township Zoning Hearing Board issued a written decision in which it memorialized the denial.

116. Chanceford Township Zoning Hearing Board issued a written decision one hundred fifty-seven (157) days after Plaintiffs' March 12, 2013 Application.

117. As a result of the Defendants' improper, untimely, and unconstitutional denial of Plaintiffs' Application for Special Exemption, Plaintiffs have been unable to open and operate their Constitutionally-protected business at the Property, and more seriously, have been silenced from presenting the Constitutionally protected speech and expression they desire to provide. Plaintiffs have, therefore, suffered monetary damage in the form of lost profits, out-of-pocket

legal expenses, and similar compensable damages.

COUNT I
42 U.S.C. § 1983
EQUAL PROTECTION

118. Plaintiffs hereby incorporate by reference the foregoing allegations as if the same were fully set forth herein.

119. Plaintiffs' Application for Special Exemption was in compliance with all filing requirements as required by the Zoning Ordinance.

120. Plaintiffs' Application met all of the criteria of the Zoning Ordinance as set forth in order for Chanceford Township Zoning Hearing Board members to approve an Application for Special Exemption.

121. In denying to Plaintiffs the right to engage in protected speech in the manner as requested in Plaintiffs' Application for Special Exemption, Defendants acted under color of state law.

122. The denial of Plaintiff's Application for Special Exemption was undertaken by Defendants within the scope of their respective duties and deprived Plaintiffs of rights secured under federal law.

123. Defendants treated Plaintiffs differently from others similarly situated without a rational basis for doing so.

124. Defendants did not follow their own rules and procedures as specified in §514.3.i of the Chanceford Zoning Ordinance.

125. Defendants failed to comply with Chanceford Zoning Ordinance §514.3.i of the Zoning Ordinance by not holding the hearing within sixty (60) days from the date of Plaintiffs' request for special exemption and not obtaining an agreement in writing from Plaintiffs to an extension of time.

126. Defendants failed to meet or render a decision within the time specified and failed to give public notice of said decision within the ten (10) days they could have met to render a decision in the same manner as provided in Chanceford Zoning Ordinance §514.3.a.

127. Defendants' inconsistent application of Chanceford Zoning Ordinance §514.3.i toward Plaintiff's Application for Special Exemption was motivated by animus or ill-will toward Plaintiffs' proposed adult entertainment facility.

128. Defendants' failure to hold the required hearing within sixty (60) days from the date of the Plaintiffs' request for a hearing entitles Plaintiffs to the Special Exemption for an adult entertainment facility on the Property.

COUNT II
14th AMENDMENT
SUBSTANTIVE AND PROCEDURAL DUE PROCESS

129. Plaintiffs hereby incorporate by reference the foregoing allegations as if the same were fully set forth herein.

130. Defendants sought to hamper development of Plaintiffs' proposed adult entertainment facility in order to interfere with otherwise constitutionally protected activity of expression of free speech at the Property.

131. Defendants' opposition to Plaintiffs' proposed adult entertainment facility was based on a constitutionally-protected activity of free speech.

132. Defendants denial of Plaintiffs' application for special exemption was a hostile reaction to a proposed constitutionally-protected activity at the Property.

133. Defendants violated Plaintiffs' substantive due process rights by taking arbitrary and conscience-shocking actions intended to stop Plaintiffs' proposal to open an adult oriented entertainment facility on the Property including (1) denying Plaintiffs' Application for Special Exemption on morality-based arguments only; (2) delaying the first hearings by the Planning Commission and the Zoning Hearing Board and other intentional delays; (3) participating in a scheme to grant a lease to Son-light Chapel; and (4) actively participating throughout the public hearing process with morality-based arguments to incite public scorn and venom toward Plaintiffs, all with the intent of stopping Plaintiffs from opening an adult entertainment facility at the Property.

134. Defendants violated Plaintiffs' procedural due process rights by failing to comply with their own rules and regulations as specified in Chanceford Zoning Ordinance, thus denying Plaintiffs the right to a Special Exemption for an adult entertainment facility at the Property.

135. Plaintiffs' property interests are a "fundamental" right under the United States Constitution and are worthy of substantive and procedural due process protection.

136. Defendants' decision denying Plaintiffs' intended land use was arbitrarily and irrationally reached and falls under Plaintiffs' substantive and procedural due process claim.

COUNT IV
FIRST AMENDMENT
UNITED STATES CONSTITUTION

137. Plaintiffs hereby incorporate by reference the foregoing allegations as if the same were fully set forth herein.

138. As related to Adult Oriented Facilities, the Zoning Ordinance is unconstitutional under the First Amendment to the United States Constitution in that Members need not render a decision on the Application for special exemption until 45 days after the last hearing and, thus, may indefinitely delay a decision in violation of the requirements of *Freedman v. Maryland*, 30 U.S. 51 (1965).

139. The Chanceford Zoning Ordinance is an unconstitutional restraint on First Amendment activities in that §508 of the Zoning Ordinance denies access to the Courts until an appeal is first filed to the Zoning Hearing Board whose Members have an unrestricted length of time to render a decision, for an unstated time and theoretically, forever.

140. The Ordinance is unconstitutional in that it provides no assurance of prompt judicial determination as relating to First Amendment activities.

141. Relating to Adult Oriented Facilities, the Chanceford Zoning Ordinance is Constitutionally infirm as a prior restraint on First Amendment rights of the U.S. Constitution since Chanceford Zoning Hearing Board Members are granted unfettered discretion to grant or deny applications on the basis of "conditions necessary to protect the public welfare",

"promotion, protecting and facilitating the public health, safety, morals and general welfare", and "said use does not constitute a public or private nuisance."

142. The language of Chanceford Zoning Ordinance is overly broad, vague, and is intended to hinder Constitutionally-protected First Amendment activity.

143. The Chanceford Zoning Ordinance is facially unconstitutional.

144. The Chanceford Zoning Ordinance is unconstitutional as applied to Plaintiffs and Adult Oriented Facility uses.

145. The denial of Application for Special Exemption denied Plaintiffs a right to expression and speech that is secured by the Constitution and laws of the United Sates.

146. The denial of Plaintiffs' Constitutional right to engage in protected speech and to use the Property for same has caused Plaintiffs monetary damage and are therefore, recoverable.

COUNT IV
PENNSYLVANIA CONSTITUTION
ARTICLE I, § 7

147. Plaintiffs hereby incorporate by reference the foregoing allegations as if the same were fully set forth herein.

148. Article 1, § 7 of the Pennsylvania Constitution protects Plaintiffs' rights of free speech and speech-related activities.

149. The denial by Defendants of Plaintiffs' Application for Special Exemption has retained Plaintiffs from exercising their liberty of speech, as affirmed by the Pennsylvania Constitution.

COUNT V
CIVIL RIGHTS ACT OF 1871, §1983

150. Plaintiffs hereby incorporate by reference the foregoing allegations as if the same were fully set forth herein.

151. Plaintiffs' right to open and operate an Adult Oriented Facility has been denied and their Constitutional rights have been abridged by Defendants and the Chanceford Zoning Ordinance in violation of §1983 of the Civil Rights Act of 1871.

152. Plaintiffs allege economic harm, both directly and indirectly, was caused from the delay in operating an Adult Oriented Facility due to Defendants and the Chanceford Zoning Ordinance.

COUNT VI
DECLARATORY JUDGMENT

153. Plaintiffs hereby incorporate by reference the foregoing allegations as if the same were fully set forth herein.

154. Chanceford Zoning Ordinance §301.1.e. and all other provisions of the Zoning Ordinance applicable to the Property are unconstitutional on their face and as applied to the Property under the First, Fourth, Fifth and Fourteenth Amendments to the United States

Constitution for the following additional reasons:

a. They effectuate an impermissible prior restraint upon Constitutionally protected speech and expression related activities, contrary to the First and Fourteenth Amendments to the United States Constitution;

b. They are an impermissible content-based restriction in violation of the First and Fourteenth Amendments;

c. They violated Plaintiffs' Constitutional rights to free speech and expression in that they are overbroad and are not narrowly tailored in their restrictions, contrary to the First and Fourteenth Amendments to the United States Constitution.

d. They violate the First and Fourteenth Amendments to the United States Constitution in that the restriction on protected speech and expression are not necessary to a compelling governmental interest, and they are not the least restrictive means available to accomplishing any asserted governmental goal;

e. They unduly restrict the content of speech and expression, they impair the communicative content of such speech and expression, and they impair the rights of Plaintiffs and others to freely associate;

f. They violate the First and Fourteenth Amendments to the United States Constitution by placing impermissible restrictions on the content of certain First Amendment materials;

g. They unduly, impermissibly and unconstitutionally restrict the ability of individuals and businesses to engage in First Amendment protected activities within Chanceford Township.

h. They contain numerous and various terms, phrases, and provisions which are impermissibly vague, ambiguous, and/or overbroad, and the definitions as contained therein are impermissibly substantially overbroad judged in relation to their plainly legitimate sweep.

i. They violate the liberty and occupational liberty interests of Plaintiffs and others by prohibiting them from engaging in a lawful, and indeed constitutionally protected, business and occupation within Chanceford Township.

j. They violate the First and Fourteenth Amendments to the United States Constitution in that the restrictions on protected speech and expression do not further a substantial governmental interest, they are not narrowly tailored to directly advance any such interest and that the restrictions upon protected expression are greater than are essential to further governmental interest and they are not supported by any *competent* evidence establishing that such restrictions would be effective in furthering any substantial governmental interest an cannot meet the test established by the United States Supreme Court in *City of Los Angeles v. Alameda Books*, 535 U.S. 425 (2202). The locational restrictions were adopted based upon an insufficient evaluation of facts or evidence that these provisions are justified on the basis of combating secondary effects which are perceived to be produced by an adult business;

k. They violate the First and Fourteenth Amendments to the United States Constitution in that the restrictions on protected speech and expression are not necessary to a compelling governmental interest, and they are not the least restrictive means available of accomplishing any asserted governmental role;

l. They unduly, impermissibly, and unconstitutionally restrict the ability of individuals and businesses to engage in First Amendment protected activities within Chanceford Township.

m. They deny Plaintiffs the equal protection of the law in that legislation and enforcement is arbitrary, oppressive, and capricious and requires Plaintiffs to submit to controls not imposed on other similarly situated businesses;

n. They violate Plaintiffs' rights, as well as the rights of its customers, to sexual privacy and are therefore in violation of the substantive due process rights of both of Plaintiffs and their customers under the Fourteenth Amendment to the United States Constitution; and

157. Because of the unconstitutionality of the Chanceford Zoning Ordinance and its enforcement against Plaintiffs by Defendants, Plaintiffs are entitled to a declaration by this Court as to the Constitutionality of the respective rights of the parties hereto.

158. For the reasons set forth above, this Honorable Court should declare that the Chanceford Township Zoning Ordinance is unconstitutional both facially and as applied to Plaintiffs, and is in violation of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to

the United States Constitution.

159. Plaintiffs have incurred large sums for attorney fees, costs, experts, and are entitled to be compensated.

WHEREFORE, Plaintiffs respectfully prays for judgment against Defendants as follows:

1. The Chanceford Zoning Ordinance pertaining to condition use permits for the operation of an Adult Oriented Facility shall be declared unconstitutional;

2. Defendants shall be permanently enjoined from enforcing Sections and as applicable to adult entertainment uses;

3. Plaintiffs shall be awarded damages for violation of §1983 of the Civil Rights Act of 1871;

4. Plaintiffs shall be awarded monetary damages in an amount to be proven at trial, proximately caused by the denial of the Application for Special Exemption, and resulting business losses, both past and future, and out-of-pocket expenses;

5. Plaintiffs shall be awarded reasonable attorney fees and costs of suit pursuant to the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. §1988;

6. For an award of the taxable costs of court; and

7. For such other and further relief as the Court may deem just, proper, and appropriate.

Respectfully submitted,

Date: June 29, 2016

By: */s/Peter J. Daley II*
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing AMENDED COMPLAINT on the following, via the US District Court ECF filing system at the email address listed below:

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Attorney for Defendants

PETER J. DALEY & ASSOCIATES. P.C.

June 29, 2016

BY: */s/Peter J. Daley II*